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NEW VISION GAMING, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

NEW VISION GAMING AND
DEVELOPMENT, INC., a Massachusetts
corporation,

Plaintiff,

v.

BALLY GAMING INC, dba BALLY
TECHNOLOGIES, a Nevada corporation,

Defendant.

Civil Case No. 2:17-cv-01559-APG-PAL

**STIPULATION AND ORDER TO STAY
PENDING RESOLUTION OF NEW
VISION'S MOTION TO DISMISS**

Pursuant to LR 7-1 and LR IA 6-2, Defendant Bally Gaming, Inc. ("Bally") and Plaintiff New Vision Gaming and Development, Inc. ("New Vision"), by and through their counsel, hereby jointly request that the Court stay discovery between the parties, disclosures, and the filing of a proposed case schedule in this matter pending this Court's resolution on New Vision's Motion to Dismiss (ECF No. 14).

In support of this stipulation, the parties state as follows.

1 **I. PROCEDURAL HISTORY**

2 On September 29, 2017, Bally filed an Answer that asserted six counterclaims against
3 New Vision: (1) Declaration of Patent Invalidity; (2) Material Breach of Contractual Warranties;
4 (3) Mistake; (4) Unjust Enrichment; (5) Breach of the Implied Covenant of Good Faith and Fair
5 Dealing; and (6) Contractual Declaratory Relief. (ECF No. 7). These counterclaims relate to the
6 same central issue that New Vision’s complaint raises: whether and to what extent Bally owes
7 New Vision royalties on the parties’ patent license agreement.

8 On October 20, 2017, New Vision filed a Motion to Dismiss all of Bally’s counterclaims
9 except (1) Declaration of Patent Invalidity. (ECF No. 14). The parties have held their Rule 26(f)
10 conference and have agreed that the Court should stay discovery between the parties and
11 disclosures, pending a ruling on the Motion.

12 As the parties were finalizing this stipulation yesterday afternoon, the Court issued a
13 scheduling order, which, among other things, set a deadline of December 5, 2017 by which to
14 hold a Rule 26(f) conference (ECF No. 21).

15 **II. GOOD CAUSE EXISTS TO STAY DISCOVERY**

16 The Court has “wide discretion in controlling discovery” and should stay or control
17 discovery pending a decision on a motion if doing so would further the “goal of efficiency for the
18 court and litigants.” *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). New Vision’s
19 Motion to Dismiss is based on Rules 12(b)(1) and 12(b)(6). (ECF No. 14 at 2). While the parties
20 dispute whether New Vision’s Motion to Dismiss has merit, the parties agree that the Court’s
21 ruling granting *or* denying the Motion could clarify issues with respect to contract interpretation
22 and damages relevant to *both* the overlapping claims and counterclaims. This, in turn, would
23 guide and potentially significantly narrow the scope of relevant discovery. This would be
24 consistent with Rule 1’s directive to “secure the just, speedy, and inexpensive determination of
25 every action.” Fed. R. Civ. P. 1.

26 Relatedly, Bally informs the Court that it is planning to file a Petition for a Covered
27 Business Method Patent Review (CBM) with the Patent and Trademark Office, arguing that each
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1 of the licensed patents is directed to patent-ineligible subject matter under 35 U.S.C. § 101 and is
2 thus invalid. Accordingly, shortly after filing the CBM petitions, Bally intends to seek a stay of
3 this proceeding pursuant to § 18(b)(1) of the America Invents Act (AIA), Pub L. No. 112–29, 125
4 Stat. 284, 329–31 (2011). At this time, however, the parties have not entered into any stipulations
5 regarding a further stay based on Bally’s anticipated CBM petitions and simply agree that a stay
6 pending review of the motion to dismiss would further judicial economy.

7 It would make little sense to engage in extensive discovery now, only to have that
8 discovery mooted by the Court’s decision on New Vision’s Motion to Dismiss. The parties will
9 be better equipped to propose a more efficient schedule in the future. However, Local Patent
10 Rule 1-23 dictates that, absent a stay, all fact and expert discovery would end on June 26, 2018,
11 and the Court’s recently issued scheduling order (ECF No. 21) has discovery closing on February
12 28, 2018. Under either timeline, the parties would need to engage in expensive discovery almost
13 immediately. Adding to the burden and inefficiency, the parties would have to serve patent
14 invalidity and infringement contentions in the near future.

15 **III. CONCLUSION**

16 The parties stipulate to a stay of disclosures and discovery (other than third party
17 discovery) and the filing of a proposed case schedule until fourteen (14) days after this Court’s
18 resolution on New Vision’s Motion to Dismiss (ECF No. 14). At that point, the parties would

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propose a schedule that allots the full amount of time for discovery as allowed under the applicable local rules.

It is so stipulated:

Dated November 22, 2017

Dated: November 22, 2017

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ORDER

IT IS SO ORDERED this 18th day of December 2017.


UNITED STATES MAGISTRATE JUDGE